*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION NO.12619 OF 2006

% 19.7.2006

M/s.T.T.Traders, represented by its Managing Partner

...PETITIONER

Vs.

$ Hindustan Petroleum Corporation Limited, represented by its Senior Regional Manager, Vijayawada LPG RO
AND OTHERS

...RESPONDENTS

! COUNSEL FOR PETITIONER: MR. P.V.A.PADMANABHAM

^ COUNSEL FOR RESPONDENT No.1: MR.P.V.SANJAY KUMAR
COUNSEL FOR RESPONDENT No.2: NONE APPEARED
COUNSEL FOR RESPONDENT No.3: MR.P.GANGARAMI REDDY

<GIST

>HEAD NOTE:

? CASES REFERRED:
1. AIR 1979 SC 1628

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12619 OF 2005

.07.2006

Between:

M/s.T.T.Traders, represented by its Managing Partner

… Petitioner

AND

Hindustan Petroleum Corporation Limited, represented by its Senior Regional Manager, Vijayawada LPG RO

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12619 OF 2005

ORDER:

The petitioner is a firm. It is engaged in the business of distribution of Liquefied Petroleum Gas (LPG) cylinders being the distributor appointed and licensed by M/s.Hindustan Petroleum Corporation Limited (HPCL), the first respondent herein. Aggrieved by the communication issued to them by the Senior Regional Manager, HPCL, Vijayawada, the petitioner filed the present writ petition. By impugned communication dated 02.06.2005, the first respondent advised the petitioner to handover all consumers catered through extension counter at Renigunta to the newly commissioned dealership of Bharat Petroleum Corporation Limited (BPCL), namely, M/s.O.V.G. Bharath Gas Agency (a proprietary concern), the third respondent herein. Initially this Court while admitting the writ petition on 15.6.2005 suspended the impugned letter. The third respondent, therefore, moved an application for vacating the interim order. When the said application being W.V.M.P.No.1908 of 2005, came up for consideration with the consent of the Counsel for all the parties, the matter is being disposed of finally by this order.

The brief fact of the matter is as follows. In 1966 the petitioner was commissioned as distributor of LPG of HPCL with which the petitioner entered into an agreement. Various guidelines issued from time to time by the Ministry of Petroleum, Government of India, and HPCL governed the distributorship. The petitioner asserts that it was appointed as dealer for the territory consisting of Renigunta, Tirupathi and Tirumala in Chittoor District as specified in the distribution agreement. In the year 2001, the third respondent herein was appointed as LPG distributor of BPCL for the territory consisting of Renigunta as area of operation. After such appointment, the third

respondent filed W.P.No.25005 of 2004 seeking a direction to close alleged extension counter of the petitioner at Renigunta. The writ petition was disposed of on 16.3.2005 directing the State Level Coordinator for Oil Industry (the second respondent herein) to take appropriate decision in accordance with the guidelines governing the distributorship of oil companies. Thereafter the second respondent addressed a letter dated 25.5.2005 to first respondent advising Indian Oil Corporation Limited (IOCL) and HPCL to handover their consumers catered through extension counter at Renigunta to the third respondent, newly commissioned dealership at Renigunta. In implementing such advise, the first respondent issued the impugned letter to the petitioner aggrieved by which the present writ petition is filed.

The first respondent filed a counter affidavit. It is stated that the petitioner was commissioned as LPG distributor of HPCL in Tirupathi with distribution area of Tirupathi as a prescribed trading area in the year 1966 and that in the year 1983 the distribution area was specified as Municipal Town of Tirupathi. However as per HP gas dealership agreement dated 18.8.2000 the trading area of the petitioner was specified as Renigunta, Tirupathi and Tirumala and that since then the petitioner has been operating the distributorship covering the distribution and trading areas of all these three places. It is also stated that the petitioner was permitted in 1983 itself for carrying out business of sale of LPG cylinders in the three areas and the same was also incorporated in the agreement dated 18.8.2000. An admission is made that the impugned letter dated 02.6.2005 was issued to the petitioner under a mistaken understanding that the petitioner was operating an Extension Counter at Renigunta, which is belied by the fact that since 1983 the petitioner's distribution area included Renigunta, Tirupathi and Tirumala and that it was not extension counter.

The third respondent filed the counter alleging that the distribution area of the petitioner is Tirupathi (Urban) of 5 KM radius thereof and that as there was no regular distributor at Renigunta, HPCL extended operation area to Tirumala and Renigunta. It is also alleged that the petitioner was given the extension counter at Renigunta, and as and when a regular distributor is appointed by any oil company, the petitioner has to close the extension counter and handover the consumers of Renigunta to the third respondent. The

third respondent further asserts that after he was appointed by BPCL on 13.3.2003 for Renigunta distribution/trading area, he made a representation to the second respondent to transfer the consumers from the extension counter operated by the petitioner, in vain. Therefore, he filed a writ petition and in obedience to the direction issued by this Court, the second respondent advised to IOCL and HPCL to handover consumers served through extension counter at Renigunta to third respondent. It is alleged that writ petitioner is having more than 4000 customers at Renigunta, which is the area of operation of third respondent whereas the third respondent as regular distributor has customer base of only 2410 (400 regular and 2010 customers under Government of Andhra Pradesh scheme 'Deepam'). The third respondent has invested huge funds and if the consumers are not transferred by the petitioner, the business of third respondent would not be financially viable.

Learned Counsel for the petitioner, Sri P.V.A.Padmanabham, submits that the petitioner was appointed as LPG distributor for Tirupathi, Tirumala and Renigunta areas. He placed reliance on HP gas (LPG) dealership (domestic and commercial) agreement (hereafter called, dealership agreement). He nextly contends that even from the year of its inception as distributor, the petitioner is governed by the terms and conditions of dealership agreement and never in its dealings with the first respondent, it was given to understand that Renigunta is only extension counter in the distribution area of the first respondent or any other oil company. The Senior Divisional Manager of the first respondent had no authority to direct the petitioner to handover the consumers catered through Renigunta counter to the third respondent. He would urge that the guidelines issued by the second respondent in their letter dated 25.5.2005 have no application to the distributorship of the petitioner.

Learned Counsel for third respondent, Sri P.Gangarami Reddy, raised three contentions. He would submit that the third respondent is appointed as distributor for Renigunta distribution area with exclusive right to operate within 15 KMs radius and as the petitioner was permitted to distribute LPG cylinders pending appointment of such distributor, the petitioner is bound to transfer the consumers to third respondent. Nextly, he would urge that the petitioner was appointed only for Tirupathi area and, therefore, he cannot insist upon continuing as distributor for Renigunta area. Secondly, learned Counsel would

submit that even as per dealership agreement the first respondent has no power to enlarge or diminish the distributor area of the distributor, which is originally specified in the dealership agreement. Lastly, learned Counsel would submit that pursuant to the order of this Court in W.P.No.25005 of 2004 dated 16.3.2005 the second respondent directed the respondent No.1 and IOC to handover the consumers catered through Renigunta extension counter to third respondent and without challenging the said order the petitioner cannot challenge the consequential order in this writ petition.

Learned Standing Counsel for first respondent, Sri P.V.Sanjay Kumar, submits that Renigunta was never treated as extension counter in the distribution area of the petitioner and that the impugned order was issued under a mistaken understanding that the petitioner was operating extension counter. He would point out that the petitioner was permitted in 1983 to be distributor for Tirupathi, Tirumala and Renigunta areas and this clause was also incorporated in dealership agreement dated 18.8.2000. He has taken this Court through various circulars issued by the first respondent as well as second respondent.

In the background facts and having regard to the rival submissions, the only point that arises for consideration is whether the petitioner was not appointed as regular distributor for Renigunta area?

Learned Counsel for the petitioner emphasized dealership agreement as important document to decide the controversy. A copy of the dealership agreement dated 18.8.2000 between the first respondent and the petitioner is annexed to the writ petition. A perusal of the same would show that the HPCL entered into a dealership agreement with the petitioner firm represented by M/s.B.P.Madhava Naidu & Smt.B.Suneela valid for a period of ten (10) years. Clauses 2(a), 2(b) (iv) and 2(b)(vi) of dealership agreement read as under.

> 2(a) **The Corporation hereby appoints the Dealer and the Dealer hereby accepts the appointment as Dealer of the Corporation**, on principal to principal basis, for sale of the Corporation's Liquefied Petroleum Gas (LPG) known as 'H.P.GAS' in cylinders only for household consumers, and commercial consumers like hotels, canteens, hospitals etc. but not for any industrial use nor for any industrial consumer **in the territory or distribution area of Tirupati, Tirumala and Renigunta**.
>
> 2(b)(iv) The Dealer will during the continuance of this Agreement confine himself to effect the sales in the area or

territory specified hereinabove but **the Corporation shall be entitled without the consent of the Dealer to enlarge, reduce, increase or modify such area or territory to such other place as may from time to time be authorized by the corporation in writing**.

2(b)(vi) During the continuance of this Agreement, **the Dealer shall not directly or indirectly engage or interest himself in the said area in any other business competing with the dealership of LPG granted to him under this Agreement other than the product supplied by the Corporation**. This clause shall not affect or override any other obligation of the Dealer under this Agreement.

(emphasis supplied)

Reading of the above clauses would belie any interpretation supporting the third respondent. It is not possible to accept the submission that the petitioner was appointed as distributor for supply of HP Gas only for Tirupathi and Tirumala areas but not for Renigunta territory. It is also not possible to accept the submission that pending appointment of a regular distributor for Renigunta territory, the petitioner was asked to supply gas allowing him to open an extension counter at Renigunta. Under clause 18 of the agreement, the term 'dealer' is explained as to include sub-dealer, agent, servant, licensee, employee or other person nominated by the dealer, and a dealer is required to act as principal and fully indemnify the Oil Corporation. This would further support the view as taken above. If only the petitioner was asked to maintain the extension counter at Renigunta, he would not have been treated as a principal indemnifying HPCL. There was no necessity for such clause in the dealership agreement if it was thought of that Renigunta is an extension counter.

While interpreting a formal document like an agreement, the Court cannot ignore any word or phrase. The true meaning of the agreement can only be inferred by arriving at the true meaning of the words used in the agreement. In **Ramana Dayaram Shetty v The International Airport Authority of India**[1], the Supreme Court laid down the following principle.

> It is a well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the Court should not be prompt to ascribe superfluity to the

> language of a document "and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use. To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The Court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable.

It is the case of the petitioner that since appointment as a dealer in 1966 he has been supplying gas to the customers in Tirupathi, Tirumala and Renigunta areas and that the same was also given a contractual form by agreement dated 01.9.1983, which is referred to in the dealership agreement dated 18.8.2000. This aspect of the matter is not denied by the respondents 1 and 2 and, therefore, it is not possible to countenance the submission of the learned Counsel for the petitioner. Further, the submission of the learned Counsel for the third respondent that there is an admission in the counter affidavit filed by the first respondent supporting his client is misconceived. In paragraph 2 of the counter affidavit of the first respondent, on which the stress is laid, reads as under.

> I submit that the petitioner was commissioned as LPG Distributor of the Respondent Corporation in Tirupathi with distribution area of Tirupathi as the prescribed trading area in the year 1966. Thereafter, in the year 1983, the distribution/trading area of the distributorship was specified as Municipal Town of Tirupathi. As per HP Gas Dealership Agreement dated 18.8.2000, the trading area of the petitioner herein was specified as Tirupathi, Tirumala and Renigunta. Since then, the petitioner has been operating the distributorship covering the trading/ distribution areas of Tirupathi, Tirumala and Renigunta.

The first sentence in the above paragraph would show that in 1966 the petitioner was appointed as a dealer for Tirupathi area, but in 1983 the trading area was specified in the distributorship as Municipal Town of Tirupathi and that in dealership agreement dated 18.8.2000, the petitioner was given Tirupathi, Tirumala and Renigunta areas. Indeed, the first respondent admits that from August 2000 onwards the

petitioner was a distributor of LPG for the area including Renigunta. The above paragraph cannot be read ignoring this aspect of the matter, which is well supported by the documentary evidence. Be that as it is, in the same counter affidavit of the first respondent, paragraph 6 reads as under.

> As stated above, under the mistaken understanding that the petitioner was operating an extension counter, when the fact remains that the petitioner was permitted way back in the year 1983 and duly incorporated in the Dealership Agreement dated 18.8.2000 and 18.8.2005 to carry out business in trading area of Tirupathi, Tirumala and Renigunta, the letter dated 02.6.2005 was issued to the petitioner by referring to the Order dated 25.5.2005 of the State Level Coordinator of Oil Industry, State of Andha Pradesh and calling upon the petitioner herein to handover the customers, catered and served by the petitioner in Renigunta to the newly commissioned distributorship, M/s OVG Bharat Gas Agency, Renigunta.

In view of the above, reading paragraph 2 as well as the dealership agreement dated 18.8.2000, it must be held that the submission of the learned Counsel for third respondent is devoid of any merit. The next aspect of the matter is whether the letter dated 25.5.2005 from the second respondent to the first respondent contains any instructions to the first respondent warranting approval of customers of the petitioners from Renigunta area to the third respondent. After referring to the writ petition being W.P.No.25005 of 2004 filed by the third respondent and the directions issued by this Court, the second respondent dealt with the matter as under.

> The petitioner in question has prayed before the Hon'ble Court for closure of extension counters in Renigunta Town of Respondents No.2 and 3 viz., Indian Oil Corporation Limited and Hindustan Petroleum Corporation Limited, where the subject dealership has been commissioned on March 13, 2003 under 1994-96 approved Marketing Plan.
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> In this context, reference is made to the Memorandum of Understanding dated December 17, 2004. The said minutes of the meeting signed by all the Heads of PSU Oil Companies on December 17, 2004, reads as follows:
>
> Sub: Stoppage of transfer of customers based on viability.
>
> The Industry Members met at IOC Head Office on 17/12/2004, wherein it was decided that in pursuance of MOP&NG vide letter No.P-20012/65/2000-Mkt dated 29/11/2004, transfer of customers being undertaken based on

> MOP&NG letter dated 17/09/2001 and 16/10/2001 may be brought to a close. In view of this, it has been decided that transfer of customers being undertaken based on viability norms amongst the distributors having common area of operation shall cease to operate i.e., transfer of customers solely on the basis of rationalization of customers would stop. However, the transfer of customers (amongst distributors appointed under Government approved Marketing Plan) based on exclusive area of operation, would continue. No transfer of customers shall be undertaken for customers enrolled in common area of operation.
>
> For distributorships to be commissioned outside the Government approved plan no inter oil company transfer of customers would be undertaken.
>
> Having arrived at such understanding, it is appropriate for the Oil Companies to close down the Extension Counters being operated by the Dealers and handover the consumers to the new Dealers who have commissioned in that area, as per the approved Marketing Plan of MOP&NG. We understand that, by and large the exercise of handing over and taking over of consumers serviced through Extension Counters has been completed on Industry basis. However, in the subject case, the same has not been carried as per the aggrieved dealer whose WP.25005/2004 has been heard and disposed off by the Hon'ble AP High Court.
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> In view of the above position, M/s.Indian Oil Corporation Limited and M/s.Hindustan Petroleum Corporation Limited are hereby advised to handover their consumers catered through Extension Counter at Renigunta to newly commissioned dealership at Renigunta M/s.O.V.G.Bharatgas Agency, Renigunta.

The basis for directing OIC and HPCL to handover their customers catered through extension counter at Renigunta through the third respondent is a Memorandum of Understanding (MoU) dated 17.12.2004, which is also extracted therein. Learned Standing Counsel for first respondent has placed before this Court a copy of MoU, which is extracted by second respondent in letter dated 25.5.2004.

The MoU dated 17.12.2004 was signed by the representatives of four Oil Companies. The purport of the same is that wherever the customers are enrolled in a common area of operation there is no necessity to transfer customers from one dealer of oil company to another dealer of other oil company or of the same oil company. The transfer of customers was mooted on the basis of rationalization of market norms and keeping in view the commercial feasibility.

However, all the distributors, who are commissioned outside Government approved marketing plan were not required to transfer customers. The Government approved marketing plan changed from time to time. The third respondent applied pursuant to a notification of appointment of distributors dated 16.8.2000 which itself was issued according to marketing plan 1994-96 in respect of which there were already two earlier notifications dated 02.1.1998 and 30.4.1998. Secondly, the place in respect of which the applications were invited is mentioned as Tirupathi/Renigunta. The third respondent was admittedly appointed as distributor for Renigunta. In such an event, IOC should have specifically mentioned that he is appointed as a dealer for Renigunta in respect of the extension counter, which was by then allegedly handled by the petitioner. That was not the case. The third respondent was admittedly appointed as a dealer of IOC in the common area in which event the transfer policy does not permit migration of the customers of the first respondent through the petitioner to IOC or third respondent. The MoU among all oil companies, which is extracted hereinabove, does not permit transfer of the customers from dealer of one oil company to dealer of another oil company, if both the dealers are appointed for a common area. That being the case, other aspects of the matter, whether the petitioner has more number of customers or the third respondent has more number of customers, are irrelevant. The third respondent being aware of the present situation accepted the dealership and if the business proposition is not commercially viable, it is for him to take an appropriate business decision. The mere fact that there is likelihood of loss in the business is no ground to deprive the petitioner its legitimate right of distributing HP gas in Tirupathi, Tirumala and Renigunta areas, which he has been doing for the last forty (40) years.

The impugned order suffers from non-application of mind and, therefore, is arbitrary. Indeed, though a mistake was committed, the first respondent rectified the same by making an admission before this Court that the impugned order was issued under a mistaken understanding of the position in the guidelines and in the MoU. The order passed by this Court in the earlier writ petition by the third respondent being W.P.No.25005 of 2004 does not in any manner confer right on the third respondent or take away the right of the petitioner.

In the result, the writ petition is allowed. But in the circumstances

of the case, there shall be no order as to costs.

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(**V.V.S.RAO, J**)

July , 2006

NOTE:

L.R.Copy be marked.

(By order)

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[1] Air 1979 SC 1628